171

Supreme Court, U.S.
FILED

10-392 SEP 20 2010

OFFICE OF THE CLERK

NO. _____

In the Supreme Court of the United States

DODIE JUNKERT, PETITIONER

v.

ROGER W. MASSEY

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

KENNETH N. FLAXMAN
200 S Michigan Ave Ste 1240
Chicago, IL 60604
(312) 427-3200
knf@kenlaw.com

Attorney for Petitioner

QUESTION PRESENTED

When an officer secures a warrant to search a lawyer's home and her office on the basis of statements allegedly made to an informant by the lawyer's client, a judge issues the warrant without any information identifying either of the two locations specified in the warrant as the lawyer's home or her office, and the officer executes the warrant without any information that contraband had been observed in the lawyer's home or her office,

Is the officer entitled to immunity in a suit for damages under 42 U.S.C. § 1983 because the warrant affidavit refers to the officer's experience with suspects hiding evidence in their residences and because the affidavit contains "some information" that the attorney may have "possessed evidence of a crime?"

TABLE OF CONTENTS

Page

Opinions below 1

Jurisdiction 1

Constitutional provision involved 2

Statement 3

Reasons for granting the petition 5

1. Contraband at a Particular Place 5

2. Reliability of Statements made to an Informant 6

Conclusion 8

Appendix A – Court of appeals opinion 1a
(June 21, 2010)

Appendix B – District Court Opinion 14a
(June 30, 2009)

Appendix C – Search Warrant 16a

Appendix D – Search Warrant Affidavit 17a

TABLE OF AUTHORITIES

Groh v. Ramirez, 540 U.S. 551 (2004) ..... passim

Illinois v. Gates, 462 U.S. 213 (1983) 5

Malley v. Briggs, 475 U.S. 335 (1986) ..... passim

Poolaw v. Marcantel, 565 F.3d 721 (10th Cir. 2009) 6

Millender v. County of Los Angeles,
__ F.3d ___ (9th Cir., No. 07-55518,
August 24, 2010) (en banc) 7-8

In the Supreme Court of the United States

DODIE JUNKERT, PETITIONER

v.

ROGER W. MASSEY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Petitioner Dodie Junkert, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-13a) is reported at 610 F.3d 364. The opinion of the district court (App., *infra*, 14a-15a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 21, 2010. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT

Petitioner Dodie Junkert, an attorney in Clinton, Illinois, brought this action under 42 U.S.C. § 1983 seeking damages arising from the execution of a search warrant at her home and her law office. A jury found against Junkert and the district judge denied her motion for judgment as a matter of law. (App., *infra*, 14a-15a) The court of appeals affirmed. *Id.* at 1a-13a.

1. The search warrant (App., *infra*, 16a), was issued on the affidavit (App., *infra*, 17a-20a), of Roger Massey, the Sheriff of DeWitt County, who was also responsible for execution of the warrant. The warrant authorized the search of two locations in Clinton, Illinois and directed the seizure of "1) laptop computers; 2) billing and payment records from Jeff McCall or Mike McCall; 3) controlled substances 4) evidence of occupancy; 5) owners manuals from laptop computers." (App., *infra*, 16a.)

2. The warrant affidavit contained information linking Jeffrey McCall to a series of recent burglaries, and

relied on statements purportedly made by McCall to an informant about his defense attorney:

> ... [A]round the end of November or the first part of December that Jeffrey McCall told the C/S that his attorney is a female from Clinton. McCall also told the C/S that he owed her (his attorney) $1500.00 and that he had given her two lap top computers as payment. McCall also told the C/S that his attorney knew that the computers were stolen and that she (McCall's attorney) wanted two more lap top computers.

3. The warrant affidavit also included the informant's statement that McCall (who was known to be a drug dealer), had told the C/S that his attorney was a cocaine user.

4. The warrant affidavit did not include any statement that anyone had seen drugs or stolen computers at either of the locations specified in the affidavit. As the Seventh Circuit observed, "[t]he affidavit's sole attempt to link the items to be seized to any particular location was the final, seemingly boilerplate paragraph, which asserted that Massey was "aware from his training and experience in these types of investigations that illegal controlled substances and stolen property can be typically hidden throughout various locations of said residences." (App., *infra*, 4a.)

5. The warrant was issued by an Illinois Circuit Judge on January 22, 2003 and executed that day. The officers first searched petitioner's law office and seized

an empty manila folder. (App., *infra*, 5a.) The officers then searched the second location identified in the warrant, which was petitioner's home, and found a mirror, several straws, and pieces of aluminum foil that contained trace amounts of cocaine. *Id.*

6. After criminal charges had been dismissed, petitioner filed this action under 42 U.S.C. § 1983 against Sheriff Massey. The case went to trial before a jury, who returned a verdict in favor of Massey. Petitioner renewed her pre-verdict motion for judgment as a matter of law, arguing that the search warrant was so deficient that Massey could not have reasonably believed that it established probable cause. The district court denied petitioner's motion. (App., *infra*, 14a-15a.)

7. The Seventh Circuit "found holes in the affidavit which raise doubts about whether it provided the judge with probable cause to issue the search warrant" (App., *infra*, 12a), but affirmed because "the affidavit does contain some information supporting the inference that Junkert possessed evidence of a crime." (App., *infra*, 10a.) The Court of Appeals held that the reference in the warrant affidavit to Massey's experience with suspects hiding evidence in their residences (App., *infra*, 12a), together with the existence of "some information" rendered the affidavit "not so deficient that any reasonably well-trained officer would have known that probable cause was lacking." *Id.*

REASONS FOR GRANTING THE WRIT

The Court should review the Seventh Circuit's decision affording immunity from damages to an officer who secured a warrant to search an attorney's home and her office on rumor and innuendo. The decision of the Seventh Circuit dilutes the decisions of this Court in *Malley v. Briggs*, 475 U.S. 335 (1986) and *Groh v. Ramirez*, 540 U.S. 551 (2004) and is in conflict with decisions in the Ninth and Tenth Circuits.

1. Contraband at a Particular Place

The Fourth Amendment requires that before issuing a search warrant, a judge must determine "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983). The judge who issued the warrant could not have made this finding because nothing in the warrant affidavit links contraband to either of the two locations specified in the warrant.

The warrant authorized the search of two buildings in Clinton, Illinois.[1] The warrant affidavit did not ex-

---

[1] The warrant authorized the search of:

> The entire premises located at 216 S. Grant Street, Clinton IL, being a grey two story building with white trim with a sign in the front yard that reads "Dodie Junkert Attorney at Law", and the entire premises located at 1305 S. Madison 8t, Clinton IL described as a yellow one story ranch with attached garage.

plain that one building was petitioner's home and the other contained her law office. (App., *infra*, 11a.) Nor did the warrant affidavit contain any averment that anyone had seen contraband at either address. (App., *infra*, 7a.) The judge who issued the warrant did not question these inadequacies.

The Seventh Circuit held that these deficiencies in the warrant affidavit did not deprive the officer who secured the warrant of immunity because the affidavit also referred to the officer's "general experience with other suspects hiding evidence in their residences." (App., *infra*, 12a.) This Court applied a less forgiving standard in *Groh v. Ramirez*, 540 U.S. 551 (2004), when it referred to the requirement that a warrant identify the place to be searched as one that would be known by any "reasonable officer." *Id.* at 563.

The Seventh Circuit's acceptance of an officer's assertions of subjective good faith in obtaining and executing a search warrant conflict with the decision of the Tenth Circuit in *Poolaw v. Marcantel*, 565 F.3d 721 (10th Cir. 2009). There, in applying *Malley v. Briggs*, *supra*, the court carefully analyzed the officer's "duty to exercise his independent professional judgment" in light of clearly established law, *id.* at 734-35, and rejected the officer's immunity defense.

2. Reliability of Statements made to an Informant

At the core of the warrant affidavit are statements allegedly made to an informant (the "C/S") by a suspected burglar, Jeffrey McCall. While the informant

provided accurate information (App., *infra*, 10a), nothing in the warrant affidavit supports the veracity of the statements McCall made to the informant. These unreliable statements are the material averments of the affidavit:

> ... [McCall] told the C/S that his attorney is a female from Clinton. McCall also told the C/S that he owed her (his attorney) $1500.00 and that he had given her two lap top computers as payment. McCall also told the C/S that his attorney knew that the computers were stolen and that she (McCall's attorney) wanted two more lap top computers.
>
> The C/S also stated that Jeff McCall told the C/S that his attorney was a cocaine user. Jeff McCall is known to agents of ISP Task Force 6 to distribute cocaine to subjects in the Clinton, IL. area.

App., *infra*, 19a.

The Seventh Circuit observed that "it is difficult to conclude that these generalized assertions of Junkert's wrongdoing provided a 'substantial basis' to search her home or office." (App., *infra*, 8a-9a.) The Court of Appeals held, however, that the officer who secured the warrant was entitled to immunity because "the affidavit does contain some information supporting the inference that Junkert possessed evidence of a crime." (App., *infra*, 10a.) The Ninth Circuit recently afforded a different reading to *Malley v. Briggs*, *supra*.

In *Millender v. County of Los Angeles*, __ F.3d ___ (9th Cir., No. 07-55518, August 24, 2010) (en banc) the

Ninth Circuit applied *Malley* to hold that officers have the "responsibility to exercise their reasonable professional judgment" and rejected the claim of immunity because "the warrant was so facially invalid that no reasonable officer would have relied on it."

The decision of the Seventh Circuit in this case dilutes the decisions of this Court in *Malley v. Briggs*, 475 U.S. 335 (1986) and *Groh v. Ramirez*, 540 U.S. 551 (2004) and should be reviewed and corrected by the Court.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted.

Kenneth N. Flaxman
200 S Michigan Avenue
Suite 1240
Chicago, Illinois 60604
(312) 427-3200

Attorney for Petitioner

September 2010

APPENDIX A

United States Court of Appeals
For the Seventh Circuit

No. 09-2908

DODIE JUNKERT,

Plaintiff-Appellant,

v.

ROGER W. MASSEY,

Defendant-Appellee.

Appeal from the United States District Court
for the Central District of Illinois.
No. 06 C 3243—Richard Mills, *Judge.*

Argued February 8, 2010—Decided June 21, 2010

Before Bauer, Evans, and Tinder *Circuit Judges.*

TINDER, *Circuit Judge.* Dodie Junkert practices law in Clinton, the county seat of Dewitt County, Illinois. In January 2003, both her law office and residence were searched by local law enforcement officers who hoped to find stolen laptop computers and controlled substances there. Junkert contends that the searches violated her Fourth Amendment right to be free from unreasonable searches, and brought this suit pursuant to 42 U.S.C. § 1983 to vindicate that claim. A jury evaluated her claim and rejected it. Ms. Junkert contends in this appeal that she was entitled to judgment as a matter of law that the searches were unconstitutional so that the jury should have been instructed to consider only the amount of the damages to be awarded.

In 2002 and 2003, police were investigating a series of some 40 burglaries across several central Illinois communities, including Clinton, involving the theft of items that included laptop computers and firearms, including police shotguns. Roger Massey, the Sheriff of DeWitt County, was a lead player in the investigation, known as "Operation Ringbuster."

Ringbuster investigators obtained evidence linking Jeffrey McCall to several burglaries involving the theft of laptops. The DeWitt County Sheriff's office gathered additional information on McCall by interviewing one of his cohorts, Richard Baker, who admitted to receiving stolen shotguns from McCall. Baker also told Massey that he dealt drugs with McCall, at which point Massey arranged for Baker to be interviewed by Sergeant Jered Shofner, an Illinois State Police officer focused on narcotics cases. Shofner already suspected McCall and Baker of drug crimes, as he had received information that McCall was a heavy cocaine user who had stolen property to pay off Baker, his dealer.

In a January 20, 2003, interview with Shofner, Baker provided information on the drug activities of various persons, including McCall. Shofner corroborated much of Baker's information by reviewing police surveillance of Baker with another cocaine distributor and verifying the name and address of the person Baker claimed was his cocaine source. Shofner also followed up on Baker's claim that he received guns from McCall as payment on a cocaine debt. Shofner drove Baker to a junkyard where Baker said the guns were located, and Baker recovered the guns.

Baker then gave Shofner the pieces of information that are most central to this appeal: statements linking McCall's criminal activity to attorney Junkert. According to Baker, sometime in late 2002, McCall said that he owed his attorney, who was female, $1500 for legal services and gave her two stolen laptops as partial payment. McCall told Baker that the attorney knew that the laptops were stolen and asked McCall to get her two more. McCall also revealed to Baker that his attorney was a cocaine user.

Massey checked local court records to find that, on December 10, 2002, McCall retained Junkert—the only female attorney practicing in DeWitt County—as privately employed counsel to represent him in connection with the burglary case. At that point, Massey and Shofner prepared an affidavit for a warrant to search two locations occupied by Junkert for laptop computers and controlled substances. The first location was Junkert's law office, described in the warrant application as "the entire premises located at 216 S. Grant Street, Clinton IL, being a grey two story building with white trim with a sign in the front yard that reads 'Dodie Junkert Attorney at Law.'" The second location was Junkert's residence, but that fact was not apparent from the face of the affidavit, which described the location simply as "a yellow one story ranch with attached garage" located at "1305 S. Madison St., Clinton IL," without identifying that address as Junkert's home.

As the basis for probable cause, the warrant affidavit cited the information provided by Baker, except Baker was not identified by name. The affidavit referred to Baker simply as a "Confidential Source" ("C/S") who had supplied Shofner with reliable information in the

police's ongoing laptop-burglary investigation. The affidavit claimed that the C/S provided specific locations of stolen property, as well as information on numerous drug dealers.

The affidavit did not assert that the C/S or anyone else actually saw stolen laptops or drugs in Junkert's home or office. Instead, the affidavit relayed the C/S's statement to Shofner that McCall said that he gave his female attorney two stolen laptops as payment on a $1500 debt, and that the attorney wanted two more laptops. The affidavit then explained that court records showed that McCall had retained Junkert in connection with the burglary case, after a prior, unsuccessful attempt to obtain private counsel, despite McCall's lack of employment.

The affidavit also cited the C/S's statement that McCall said that his attorney was a cocaine user, and reported that Illinois State Police officers knew that McCall distributed cocaine in the Clinton area. The affidavit's sole attempt to link the items to be seized to any particular location was the final, seemingly boilerplate paragraph, which asserted that Massey was "aware from his training and experience in these types of investigations that illegal controlled substances and stolen property can be typically hidden throughout various locations of said residences ..."

On January 22, 2003, Massey signed the warrant affidavit and presented it to an Illinois Circuit Court judge, who issued the warrant for Junkert's home and office the same day. Before executing the warrant, Massey called Junkert, who was then in St. Louis, to obtain her presence at the search so that the police

would not have to force entry into her home. At that point, Junkert admitted to Massey that she received two laptop computers from McCall and, upon returning to Clinton, handed over the one computer that she still had in her possession. Junkert also told Massey where the second computer was located, allowing the police to recover it also before the search. (At earlier stages in the district court, Junkert asserted that if probable cause ever existed, it dissipated upon recovery of the second laptop. She does not pursue that theory on appeal.)

Massey and other officers then executed the search warrant on Junkert's home and law office. Beginning at Junkert's office, police seized an empty manila folder with the name "Jeff McCall" on it. Moving on to Junkert's home, the police searched every room in the house but did not find any laptop computers. The police did seize a mirror, several straws, and pieces of aluminum foil that contained trace amounts of cocaine.

Junkert was charged in state court with crimes relating to the laptop computers and drug evidence recovered by the police. After a trial resulted in a hung jury, the prosecution agreed to dismiss the charges in exchange for Junkert's placing her law license on inactive status for four months.

Junkert then brought this action under 42 U.S.C. § 1983 against Massey in his individual capacity. Her complaint raised several Fourth Amendment claims, including that the search of her home and office was invalid because Massey's warrant lacked probable cause. The case went to trial before a jury, who returned a verdict in favor of Massey. Junkert renewed

her pre-verdict motion for judgment as a matter of law, arguing that the search warrant was so deficient that Massey could not have reasonably believed that it established probable cause. The district court denied Junkert's motion, and Junkert appeals.

We review de novo the district court's denial of a motion for judgment as a matter of law, viewing the evidence in the light most favorable to the jury's verdict. *Waters v. City of Chicago*, 580 F.3d 575, 580 (7th Cir. 2009). We also review de novo whether a warrant was supported by probable cause, but we afford great deference to the decision of the judge issuing the warrant. *United States v. Bell*, 585 F.3d 1045, 1049 (7th Cir. 2009). We will uphold a finding of probable cause as long as the issuing judge had a " 'substantial basis' " for concluding " 'that a search would uncover evidence of wrongdoing.' " *United States v. Dismuke*, 593 F.3d 582, 586 (7th Cir. 2010) (quoting *Illinois v. Gates*, 462 U.S. 213, 236 (1983)).

"[A]n affidavit submitted in support of a search-warrant application will be sufficient to support a probable-cause finding if, 'based on the totality of the circumstances, the affidavit sets forth sufficient evidence to induce a reasonably prudent person to believe that a search will uncover evidence of a crime.'" *Id.* (quoting *United States v. Peck*, 317 F.3d 754, 756 (7th Cir. 2003)). Where, as here, the affidavit relies on information supplied by an informant, "the totality-of-the-circumstances inquiry generally focuses on the informant's reliability, veracity, and basis of knowledge." *Id.* (citing *United States v. Olson*, 408 F.3d 366, 370 (7th Cir. 2005)). Several factors inform the analysis, including: (1) the degree of police corroboration of the informant's in-

formation; (2) whether the information is based on the informant's personal observations; (3) the amount of detail provided by the informant; (4) the interval of time between the events reported by the informant and the warrant application; and (5) whether the informant personally appeared before the warrant-issuing judge. *Id.* at 587 (citing *United States v. Koerth*, 312 F.3d 862, 866 (7th Cir. 2002)).

Examined against these factors of informant reliability, the C/S's information leaves much to be desired. The C/S did not state that he personally observed laptops or drugs in Junkert's home or office, or even that McCall claimed to have such firsthand observation. *Cf. id.* (informant told police that he personally and recently saw guns in the defendant's home). The C/S also failed to specify the time periods or other details of Junkert's criminal activity. Although the C/S claimed that McCall said that he gave stolen laptops to Junkert and that Junkert was a cocaine user, the affidavit provided no information on the time or place of any particular crime. *Cf. id.* at 585, 587 (informant saw guns in the defendant's home within a week of the warrant application); *United States v. Woolsey*, 535 F.3d 540, 542 (7th Cir. 2008) (informant saw over two pounds of drugs at specific places in the defendant's home in the past week). The C/S also did not personally appear before the Illinois state judge issuing the warrant.

The affidavit did attempt to bolster the C/S's reliability by stating that he had provided accurate information on previous drug and property crimes. Still, while this information might go to the C/S's past reliability on other crimes not involving Junkert, it supplies no details to support the C/S's generalized assertions that

Junkert was engaged in criminal activity. *See Peck*, 317 F.3d at 757 (police check on the defendant's record was insufficient to corroborate an informant's non-detailed allegations of drugs in the defendant's home).

The affidavit also described the police's investigation linking McCall to the possession of stolen laptops and drugs, showing that McCall was at least capable of giving these items to Junkert. The affidavit further stated that the police confirmed that an unemployed McCall retained Junkert as private counsel (although he previously was appointed a public defender), suggesting that she would be expecting a fee from McCall (though not necessarily in the form of stolen computers). Even so, in the absence of any details about a particular criminal transaction between McCall and Junkert, the police's background information on McCall's crimes and retention of Junkert has only modest corroborative value. *See Dismuke*, 593 F.3d at 588 (confirmation of the defendant's identity and address "d[id] not directly bolster the informant's claim that Dismuke illegally possessed guns at his home").

Of course, we cannot focus too heavily on any one of these deficiencies in the affidavit, which must be read as a whole in light of the totality of the circumstances. *See Bell*, 585 F.3d at 1051 ("[T]he whole may be more than the sum of the parts when assessing probable cause." (quotation omitted)). Nevertheless, the sum of the C/S's information essentially says that McCall, a known thief and cocaine dealer, claimed that he paid off his lawyer, also a cocaine user, with stolen laptop computers at some unspecified time and place. Even remaining mindful of the great deference afforded to the issuing judge's decision, it is difficult to conclude that these generalized

assertions of Junkert's wrongdoing provided a "substantial basis" to search her home or office.

Assuming that the search warrant lacked probable cause, it does not necessarily follow that Massey may be personally liable in Junkert's § 1983 action. Massey is entitled to qualified immunity for his conduct in applying for a search warrant. *See Hinnen v. Kelly*, 992 F.2d 140, 144 (7th Cir. 1993). In this context, the test for qualified immunity comes from *Malley v. Briggs*, 475 U.S. 335, 344-45 (1986), in which the Supreme Court held that an officer who relies on a subsequently invalidated warrant may be liable for § 1983 damages only if the warrant application was "so lacking in indicia of probable cause as to render official belief in its existence unreasonable." In *Malley*, the Court adopted this qualified immunity standard from the standard established in *United States v. Leon*, 468 U.S. 897 (1984), for the good-faith exception to the exclusionary rule. *Malley*, 475 U.S. at 344. So the evaluation of qualified immunity in obtaining a search warrant is similar to that used in applying the good-faith standard (in fact, there may be no difference at all in the analysis). *See Koerth*, 312 F.3d at 869. An officer may be personally liable only if "(1) courts have clearly held that a materially similar affidavit previously failed to establish probable cause under facts that were indistinguishable from those presented in the case at hand; or (2) the affidavit is so plainly deficient that any reasonably well-trained officer 'would have known that his affidavit failed to establish probable cause and that he should not have applied for the warrant.'" *Id.* (quoting *Malley*, 475 U.S. at 345).

We have never clearly held that an affidavit materially similar to Massey's failed to establish probable

cause. We also cannot say that the affidavit was so deficient on its face that Massey's reliance on it was unreasonable. Although not a model for probable cause, the affidavit does contain some information supporting the inference that Junkert possessed evidence of a crime. As discussed, the affidavit described McCall's past burglaries (including crime scene evidence and the recovery of stolen items linking McCall to at least one burglary in which four laptops were taken on December 5, 2002) and drug dealings followed by his retention of Junkert as private counsel, making it plausible that McCall would convey stolen laptops or drugs to Junkert. Through court records described in the affidavit, it was established that in September 2002, McCall was appointed a public defender after he was unsuccessful in obtaining private counsel, but that suddenly, on December 10, 2002, McCall was able to obtain Junkert as his private counsel. The affidavit notes McCall's ability to move from public to private counsel despite the police records showing him to be unemployed. The affidavit also reported that the C/S had provided accurate, specific information on other drug and property crimes similar to Junkert's suspected criminal activity. This attempt to demonstrate the C/S's track record distinguishes Massey's affidavit from one offering a "wholly conclusory" statement of informant reliability. *Dismuke*, 593 F.3d at 587; *see also United States v. Mitten*, 592 F.3d 767, 774 (7th Cir. 2010) ("Past performance is one way of establishing the veracity or reliability of an informant . . . ."); *Koerth*, 312 F.3d at 867 ("[T]he affidavit fails to explain the extent, if any, that [the informant] has previously provided information leading to arrests or prosecutions for criminal activity of any kind.").

Finally, in an attempt to link stolen computers and drugs to Junkert's home, the affidavit cited Massey's "training and experience" that "illegal controlled substances and stolen property can be typically hidden throughout various locations of said residences." This statement partially ameliorates the C/S's lack of first-hand observation of the places to be searched, since a judge may rely on an officer's experience to draw "reasonable inferences about where evidence is likely to be kept." *United States v. Orozco*, 576 F.3d 745, 749 (7th Cir. 2009) (quoting *United States v. Lamon*, 930 F.2d 1183, 1189 (7th Cir. 1991)).

Admittedly,the affidavit's reference to "said residences" is ambiguous, since the affidavit contained no previous mention of any "residence." Indeed, the warrant application never explicitly stated that Junkert's residence was one of the two locations to be searched; the reader of the warrant must infer that the "yellow one story ranch with attached garage" at the listed address is Junkert's home. (Although not part of our consideration of qualified immunity, a minor fact that came out at trial may explain the omission of an identification of the yellow house as Junkert's residence. Apparently, the affidavit was prepared for presentation to a Dewitt County judge, who, in a city with a population of less than 8,000 and a correspondingly small bar, might be expected to recognize that location as Junkert's residence. However, both Dewitt County judges recused themselves from reviewing the warrant because of the potential involvement of a local attorney as a subject of the search. The affidavit was ultimately presented to a judge in adjacent Piatt County.) The affidavit also lacked details about why Junkert, more than any other suspect, would be uniquely likely to keep evidence in

her home. *Cf. id.* at 748-49 (citing the officer's experience that a high-ranking member of a drug distribution gang would probably keep evidence in his home); *Lamon*, 930 F.2d at 1186, 1189 (officer's experience that major drug dealers often keep drugs and records at a permanent residence that is not a drug distribution site). So Massey's general experience with other suspects hiding evidence in their residences, without more, does not show a fair probability that Junkert kept stolen laptops or drugs in her home. Still, the affidavit's mention of Massey's experience provides another reason why an officer could reasonably believe that the warrant was supported by probable cause.

Although the few indicia of reliability highlighted above leave the affidavit with much to be desired, we conclude that an officer could reasonably believe that the affidavit established probable cause. With Junkert's assistance in this retrospective critique, we have found holes in the affidavit which raise doubts about whether it provided the judge with probable cause to issue the search warrant. But the affidavit does contain several indicia of probable cause, and it is not so deficient that any reasonably well-trained officer would have known that probable cause was lacking, requiring the second-guessing of the judge's authorization. Massey therefore has a qualified immunity defense against Junkert's § 1983 action, and for that reason, we find no reason to overturn the judgment in favor of Massey.

We close with this additional cautionary note, though. When Junkert initially filed her complaint in the district court, one of her claims was that Sheriff Massey directed the search in her office in a manner that did not respect the confidentiality of attorney-

client communications and attorney work product. Somewhere along the line, that claim dropped out of the case and so is not before us. But this serves a good reminder: law enforcement officials should be cautious when permitted to search places where information protected by recognized privileges may be stored, such as the offices of lawyers or medical practitioners, so as not to invade those privileges in an unauthorized manner. It is equally as important that when a magistrate is asked to issue a warrant authorizing the search of such a place, the judicial authority should be even more cautious, if possible, to make sure that any warrant issued is carefully drawn, so as not to allow the police to blithely rummage through privileged information unrelated to the subject of the search.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

DODIE JUNKERT,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 06-3243
	)	
SHERIFF ROGER W. MASSEY	)	
and	)	
DEWITT COUNTY, ILLINOIS,	)	
	)	
Defendants.	)	

ORDER

RICHARD MILLS, U.S. District Judge:

Following the trial in this case, the jury returned a verdict in favor of Defendant Roger W. Massey, Sheriff of DeWitt County, Illinois, and against Plaintiff Dodie Junkert on each of the Plaintiff's claims. The Court thereupon entered judgment on the jury's verdict. Pending now before the Court is the Plaintiff's renewed motion for judgment as a matter of law under Rule 50(b) of the Federal Rules of Civil Procedure.

Having concluded that there was sufficient evidence in support of the jury's verdict in favor of the Defendant, the Court will DENY the Plaintiff's motion under Rule 50(b).

Ergo, the Plaintiff's renewed motion pursuant to Rule 50(b) for judgment as a matter of law [d/e 74] is DENIED.

ENTER: June 30, 2009

FOR THE COURT:

s/ Richard Mills
United States District Judge

APPENDIX C

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF
THE SIXTH JUDICIAL CIRCUIT
COUNTY OF DEWITT

SEARCH WARRANT

TO ALL PEACE OFFICERS OF THE STATE:

On this date of, affiant DeWitt County Sheriff Roger Massey has subscribed and sworn to a Complaint for Search Warrant before me. Upon examination of said Complaint, I find it states facts sufficient to establish probable cause for the issuance of a warrant to search the following described place, persons or objects for the items listed.

I, THEREFORE, COMMAND THAT YOU SEARCH:
The entire premises located at 216 S. Grant Street, Clinton IL, being a grey two story building with white trim with a sign in the front yard that reads "Dodie Junkert Attorney at Law", and the entire premises located at 1305 S. Madison 8t, Clinton IL described as a yellow one story ranch with attached garage.

AND, IF FOUND, SEIZE THE FOLLOWING:
Items or Materials to be seized: 1) laptop computers; 2) billing and payment records from Jeff McCall or Mike McCall; 3) controlled substances 4) evidence of occupancy; 5) owners manuals from laptop computers

ISSUED: 1/22/03 at 11:07 A.M.

/s/ John P. Shonkwiller
Circuit Judge

APPENDIX D

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF
THE SIXTH JUDICIAL CIRCUIT
COUNTY OF DEWITT

COMPLAINT FOR SEARCH WARRANT

A. Complainant: DeWitt County Sheriff Roger W. Massey

B. Place or Objects to be searched: The entire premises located at 216 S. Grant Street, Clinton IL, being a grey two story building with white trim with a sign in the front yard that reads "Dodie Junkert Attorney at Law", and the entire premises located at 1305 S. Madison St, Clinton IL described as a yellow one story ranch with attached garage.

B. (sic) Items or Materials to be seized 1) laptop computers; 2) billing and payment records from Jeff McCall or Mike McCall; 3) controlled substances 4) evidence of occupancy; 5) owners manuals from laptop computers

C. Applicant has probable cause to believe said items or materials are located on, at, or within the place or object to be searched based on the following:

That on June 18, 2002 Jeffrey McCall was arrested by Clinton Police at the Clinton Assembly of God Church, when officers responded to a Burglary in progress call.

That on June 19, 2002 a complaint was filed in DeWitt County Circuit Court charging McCall with Burglary to the Clinton Assembly of God Church.

That court records show that on September 11, 2002, Attorney Richard Goff was appointed by the court as a public defender to represent McCall after McCall was unsuccessful in obtaining private counsel.

That law enforcement investigations show that Jeffrey McCall is unemployed.

That the DeWitt County Sheriffs Department and the Illinois State Police are investigating approximately 40 burglaries that have occurred in Central Illinois. That burglary reports on file, show that several laptop computers have been taken in these burglaries. That included in these reports is a report on a burglary to Heath's Implement Inc. located in Monticello, Illinois that occurred on December 5, 2002. That four laptop computers were taken in this burglary. That crime scene evidence along with recovered stolen items link Jeffrey McCall and Mike McCall to this burglary as well as others.

That the current investigation has documented that Jeffrey McCall has been in possession of numerous stolen lap top computers. That there are stolen lap top computers that have not been recovered.

That DeWitt County Circuit Court records show that on December 10, 2002, Jeffrey McCall obtained private counsel to represent him in the above mentioned burglary case. That the court records show that counsel as being attorney Dodie Junkert.

That Insp./Sgt.Shofner of the Illinois State Police Task Force Six Covert Investigation Unit has a Confidential Source (C/S) that has supplied reliable information in this investigation.

Information provided by the C/S has also been used to identify numerous individuals involved in the distribution of narcotics and the C/S's information had been verified as reliable through other investigative means. In regards to this burglary investigation, the C/S had provided investigators with specific locations of stolen property that were taken in numerous burglaries. When investigators acted upon the C/S's information, they recovered the specific stolen items in the location described the the CIS.

That on January 20, 2003, Insp./Sgt. Shofner interviewed the C/S. That during that interview the C/S told Shofner that around the end of November or the first part of December that Jeffrey McCall told the C/S that his attorney is a female from Clinton. McCall also told the C/S that he owed her (his attorney) $1500.00 and that he had given her two lap top computers as payment. McCall also told the C/S that his attorney knew that the computers were stolen and that she (McCall's attorney) wanted two more lap top computers.

The C/S also stated that Jeff McCall told the C/S that his attorney was a cocaine user. Jeff McCall is known to agents of ISP Task Force 6 to distribute cocaine to subjects in the Clinton, IL. area.

D.1. Affiant, Sheriff Roger Massey, is a Law Enforcement Officer in the state of Illinois.

D.2. That the affiant is currently involved in an ongoing investigation with agents of the Illinois State Police relating to illegal drug sales, burglary, and possession of stolen property in the DeWitt County area.

E. Affiant is aware from his training and experience in these types of investigations that illegal controlled

substances and stolen property can be typically hidden throughout various locations of said residences. Affiant is aware that transactions involving narcotics and stolen goods are often initiated via telephone or with the use of electronic pagers and electronic e-mail. Affiant is further aware that often times those that sell drugs and goods from said locations will hide or destroy evidence of the crime somewhere on their person or persons of others within the residence.

/s/ Roger W. Massey
DeWitt Co. Sheriff Roger Massey

Subscribed and sworn to before me this 22nd day of January of 2003 at 11:07 A.M.

/s/ John P. Shonkwiller
Circuit Judge